

JAP:JLS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

07 M 1247

- - - - -X

UNITED STATES OF AMERICA

COMPLAINT

- against -

(18 U.S.C. § 2422(b))

VIKRANT BIRJE,

Defendant.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

ROBERT FITZSIMMONS, being duly sworn, deposes and says that he is a Special Agent with United States Immigration and Customs Enforcement ("ICE"), duly appointed according to law and acting as such.

Upon information and belief, on or about and between September 10, 2007 and November 26, 2007, within the Eastern District of New York and elsewhere, the defendant VIKRANT BIRJE, using the mail or any facility or means of interstate or foreign commerce, did or attempted to knowingly persuade, induce, entice or coerce an individual under 18 years of age to engage in a sexual activity for which any person can be charged with a criminal offense.

(Title 18, United States Code, Section 2422(b))

The source of your affiant's information and the

grounds for his belief are as follows:¹

1. I am a Special Agent for ICE and have been so employed for approximately 19 years. I am currently assigned to the Child Exploitation Unit in New York, New York, and conduct investigations relating to, among other things, crimes against children, including the trafficking of child pornography. I have gained expertise in the conduct of such investigations through training in seminars, classes, and daily work related to conducting these types of investigations, including the execution of numerous search warrants relating to child exploitation and pornography offenses and subsequent prosecution of offenders. In addition, I have personally participated in the investigation and arrest of individuals who had knowingly persuaded, induced, enticed or coerced an individual under the age of 18 years to engage in sexual activity and in investigations of individuals who had traveled to engage in sexual contact with a minor.

2. The factual information supplied in this application and affidavit is based upon my investigation and upon information provided to me by other agents of ICE and members of other law enforcement agencies.

¹ Since this affidavit is being submitted for the limited purpose of establishing probable cause to arrest, I have not set forth each and every fact concerning this investigation of which I am aware. Additionally, statements attributed to individuals in this affidavit are described only in sum and substance and in part.

SYNOPSIS OF EVIDENCE

3. The information provided in this affidavit is the summation of an investigation conducted by a Detective Investigator working for the King's County District Attorney's Office in Brooklyn, New York ("the Detective") and your affiant. For the purpose of this investigation the Detective, using a computer in Brooklyn, New York, assumed an online undercover identity of a 14-year-old girl living in Brooklyn, using the screen name "cutaebella."

4. On September 10, 2007, an individual subsequently identified as defendant VIKRANT BIRJE, as detailed below, began communicating with the Detective via Yahoo instant messaging services. During that exchange and in their subsequent conversations over the Internet, which continued until November 19, 2007, the defendant used the screen name "me9u62000" and "Shawn" when communicating with the Detective. On later dates, he used MSN/Hotmail in addition to Yahoo! to communicate with the Detective. The communications included transmission by the defendant of video clips of adults engaging in sexually activity and three live electronic transmissions of himself masturbating. I have reviewed these emails and have spoken with the Detective about this investigation. Portions of the different

conversations are summarized below.²

5. On November 26, 2007, following telephone conversations between the defendant and the Detective in which the defendant stated, in substance, that he was coming from New Jersey to meet the Detective, the defendant arrived in Brooklyn, New York. ICE agents placed him under arrest. Inside his backpack they found 2 unused condoms and three cans of beer.

6. The defendant, after waiving his Miranda rights, stated, in substance, that he uses the name "me9u62000" in Yahoo!Mail and MSN/Hotmail, and that he had chatted with a 15-year-old female named "bella," who lives in Brooklyn, New York. The defendant also stated that he knew the law and was traveling just to be friends with bella, and not to engage in sexual activity.

RELEVANT STATUTES

7. Title 18, United States Code, Section 2422(b) provides, in relevant part, that "[w]hoever using the mail or any facility or means of interstate or foreign commerce . . . knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in . . . any

² Based upon my training and experience the abbreviations, grammar, and spelling used in Internet messages on Yahoo!Mail and MSN/Hotmail can deviate widely from standard English. For the sake of clarity the remaining quotations from internet chats do not contain the repeated use of "sic" that would be appropriate in other contexts.

sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not less than 5 years and not more than 30 years.

8. Under New York State Penal Law, Section 130.25(2), a person is guilty of rape in the third degree when: "Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old."

9. Under New York State Penal Law, Section 130.40(2), a person is guilty of sodomy in the third degree when: "Being twenty-one years old or more, he or she engages in deviate sexual intercourse with a person less than seventeen years old."

10. Under New York State Penal Law, Section 130.00(2), "[d]eviate sexual intercourse' means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva."

THE ROLE OF THE INTERNET AND COMMERCIAL COMPUTER SERVICES

11. Yahoo is a commercial computer service that offers an Internet mail service, Yahoo!Mail, which allows users to communicate online via email and to send photographs and live video over the Internet. To communicate using Yahoo!Mail a subscriber must have access to a computer which communicates through a modem connected to telephone and cable lines with the

Yahoo central computer system located in Sunnyvale, California. MSN/Hotmail is an electronic mail service similar to Yahoo!Mail, with a central computer system located in California.

12. A "chat room" is an electronic meeting room provided by Yahoo and other similar services, which allows Internet users to have group conversations.

13. "Instant messaging" (IM) is real-time typewritten conversation between individuals, much like an oral conversation, and is used to conduct one-on-one conversations.

THE INVESTIGATION

14. On September 10, 2007, the Detective logged onto a Yahoo chat room using the screen name, "cutabella." The defendant, using the name "me9u62000," began corresponding with the Detective via the instant messaging system. On that date the Detective told the defendant that "cutabella" is a 14-year-old girl who lives in Brooklyn, New York. The defendant, who wrote that his first name was "Shwan," identified himself as a 23-year-old male of Indian descent who lives in New Jersey. The defendant, using a web camera, showed the Detective a picture of a penis, and simultaneously wrote that the penis was his. The defendant also stated, "maybe I will give u a chance to play with itwhen we meet.. if u want to," and asked "will u be able to take it in ur mouth?"

15. Also during the September 10, 2007, correspondence

the defendant file transferred to the Detective two movie files. The first showed an adult female performing oral sex upon an adult male, and the second showed two adult females engaging in sexual intercourse with an adult male.

16. On September 11, 2007, in another IM session via Yahoo!, the defendant asked whether the Detective had viewed the videos described above. When the Detective replied yes, the defendant stated, "okjust doing your homework for our meet huh?"


17. On September 18, 2007, in another IM session via Yahoo!, the defendant stated that the fact that he was 22 years old and the Detective was only 14 years old did not matter for "fun," "the one you saw in that video, that kind of fun," "age doesn't matter for that."

18. There were several additional contacts via Yahoo! and IM sessions between the defendant and the Detective, including a session on September 24, 2007, when the defendant sent the Detective a web camera session of him masturbating; a September 26, 2007, session during which the defendant asked the Detective to wear a short skirt when they meet so that "I can slide my inide ur skirt an rub ur pussy"; and an October 18, 2007, session during which the defendant again asked the Detective's age. When the Detective replied that she was 14, the defendant replied that he was concerned that "i will be haing sex with an underage kid."

19. A review of Yahoo! records reveals that the account "me9u62000" connected to the Internet using an IP address 68.83.177.239, assigned to Comcast Cable. Comcast Cable records for September 9 through September 24, 2007, reveal that the subscriber for the IP address is the defendant, Vikrant Birje, 108 Frank E. Rodgers Blvd, Apt. C, Harrison, New Jersey.

20. As reflected in paragraph 5 above, agents arrested the defendant in Brooklyn, New York on November 26, 2007.

WHEREFORE, your affiant respectfully requests that the defendant VIKRANT BIRJE be dealt with according to law.


ROBERT FITZSIMMONS
Special Agent, ICE
Child Exploitation Unit

Sworn to before me this
26th day of November, 2007


UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK